

**Village of Irvington
Zoning Board of Appeals**

Minutes of Meeting held September 24, 2002

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M. on Tuesday, September 24, 2002, in the Trustees' Meeting Room, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman
George Rowe
Paul M. Giddins
Robert Bronnes
Brian Barrett
Bruce Clarke

Mr. Lustenberger acted as Chairman and Mr. Giddins as Secretary of the meeting.

The minutes of the August 27, 2002 were duly approved.

There were nine matters on the agenda:

Case No.

2002-22 Dennis & Cynthia Haines – 3 Hudson Road East (Sheet 15, Lot P121)

The Applicant appeared.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Irvington Zoning Ordinance (the “Code”), the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of § 224-51 of the Code, relating to the Broadway Buffer, so as to legalize the construction of a fence that the Applicant has already erected without obtaining a building permit or a variance.

The Board reviewed drawings and photographs submitted by the Applicant, comparing the Applicant’s fence to other fences in the Broadway Buffer. The Applicant stated that the company that erected the fence did not inform him that a permit or variance was required. It was also noted that the fence has not been approved by the Architectural Review Board (“ARB”).

The Board stated its desire to know what was known by the company that erected the fence at the time it was constructed, with respect to required permits and/or variances. In addition, the Board stated that the fence had to be approved by the ARB before the Applicant could seek a variance from the Broadway Buffer provisions of the Code.

The application was adjourned pending the approval of the fence by the ARB.

2002-23 Sarah and Wilson Van Law – 26 North Dutcher Street (Sheet 5, Block 209; Lot 31)

The Applicants appeared.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

Mr. Bronnes recused himself from consideration of the matter as he is an affected property owner living in the vicinity of the Applicants.

The Applicants sought a variance from the provisions of §§ 224-11, relating to rear and side yard setbacks, and 224-89A(1), relating to enlarging on a non-conforming lot, so as to permit the legalization of an existing patio and pergola in the rear of Applicants' house and constructed by the Applicants without obtaining a permit or variance.

The Board reviewed sketches prepared and submitted by the Applicants, and considered the comments of neighbors Adrienne and John Sanders, who expressed their support for the application and stated their admiration for the patio and pergola.

The Board noted that the information supplied by the Applicants was insufficient for the Board to consider the extent to which the patio and pergola may exceed permitted coverage requirements. The Board further noted that the pergola must first be approved by the ARB before the issue of a variance can be considered. For the foregoing reasons, the application was adjourned.

2002-24 Stanley Rubenzahl – 76 North Broadway (Sheet 10; Lot P101)

The Applicant did not appear, and the matter was marked off the calendar.

2002-25 Kathi Schaeffer – 18 Meadowbrook Road (Sheet 1, Block 246; Lot 10)

The Applicant by her architect, Susan Riordan.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of § 224-89 of the Code, seeking to vary the Code's non-conforming lot requirements so as to permit the construction of a new enclosed porch to the rear of the Applicant's house.

. The Board reviewed drawings and photographs submitted by the Applicant and noted that the addition to the rear of the house does not violate the Code's set back or coverage provisions. Thus, the Board found, both the building and its use conform to the Code. The Board concluded that § 224-89 could be found inapplicable for that reason alone. The Board found § 224-89 to be inapplicable also because subsection A of § 224-89 prohibits changes to nonconforming uses of "buildings or open land." As noted, the use of the building conforms to the Code. The Board noted that "open land" could refer to undeveloped land, not to a developed parcel such as the Applicant's, and thus the section would be inapplicable to the Applicant's parcel. The Board further found that even if "open land" applied to the undeveloped portion of the Applicant's lot, the new construction to the rear of the house is modest in size and not detrimental to nearby properties or the neighborhood and is therefore subject to a variance. The Board noted that subsection B of § 224-89 prohibits certain changes to buildings which "house a non-conforming use". However, the Applicant's property does not house a non-conforming use.

For the reasons noted above, the Board concluded that § 224-89 does not apply to the application, and even if it did, the Board would have the power to vary its provisions

and would do so because the proposed changes to the house are not increasing the non-conformity or affecting it in any way.

There was no opposition to the application

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance from the provisions of §224-89 of the Code, to permit the construction of an enclosed porch to the rear of the Applicant's house.

2002-26 Dan and Elise Gilbert – 20 Hillside Terrace (Sheet 10D, Block 243, Lots 28 and 29)

The Applicants appeared by their architect Michael Gallin.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-10, 224-11 and 224-34 of the Code, relating to set backs and building height, so as to permit the construction of an addition to Applicant's house.

The Board reviewed drawings submitted by the Applicant and noted that the proposed addition will intrude only a matter of inches into the front yard set back required by § 224-11. The Board also found that the addition's height does not exceed the 35-foot maximum provided in § 224-34, and while the addition does produce a third story, above the 2½ story maximum allowed by § 224-34, it is only to the rear of the house because the lot slopes downward from front to rear, producing three stories at the

back of the building. Thus, the roofline will conform to, and be in harmony with, the rooflines of nearby properties.

With respect to § 224-10, the Board found the section to be inapplicable. The non-conformity of the lot size was not at issue because the proposed addition does not affect the size of the lot. Thus, the existing non-conformity is not being altered or enlarged in any way. The Board also found that any non-conformity in the size of the lot would be mitigated by the fact that the Applicant owns a portion of the lot to the south, which abuts the side of the lot on which the addition will rest.

After weighing the applicable factors, the board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance, and that the requested variances were small. The Board further concluded that the requested variances would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variances, while self-created, did not for that reason alone outweigh the factors favoring the variances.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance.

The Applicant appeared by her architect Cristina Griffin.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-11 and 224-13 of the Code, relating to side yard set backs and coverage, so as to permit the addition of a sun room and dining area to applicant's house.

The Board reviewed drawings submitted by the Applicant and noted that the intrusion to the side yard setback is not substantial, and the coverage calculation submitted by the Applicant revealed less than a 10% overage.

After weighing the applicable factors, the board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance, and that the requested variances were small. The Board further concluded that the requested variances would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variances, while self-created, did not for that reason alone outweigh the factors favoring the variances.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance.

2002-28 Steve Hess – 24 Ilinka Lane (Sheet 13C, Lots P34)

The Applicants appeared with their architect Bruce Levy.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-11 and § 224-13 of the Code, relating to set backs and coverage requirements, so as to permit the construction of a kitchen between the deck and greenhouse at the rear of the Applicant's house.

The Board reviewed drawings submitted by the Applicant and noted that the proposed kitchen will intrude less than fifteen feet into the rear yard set back. In addition, the proposed kitchen will not extend further into the rear yard set back than the adjoining deck, which intrudes 14'2" into the setback. With respect to coverage, the Board noted that the 298 square feet required for the proposed kitchen represented 9.3% more than the permitted square footage and brought the total excess lot coverage to a significant amount – 17.85%. However, the Board concluded that the excess coverage was acceptable, since the proposed kitchen was located in such a way as to minimize any detriment, and was not in fact a detriment, to any neighboring properties.

After weighing the applicable factors, the board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and

welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, and that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance. The Board further concluded that the requested variances would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variances, while self-created, did not for that reason alone outweigh the factors favoring the variances.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance.

2002-29 Frank and Ruth Nicodermus – Hermits Road (Sheet 11, Lots P27K)

The Applicants appeared. Also appearing were contract vendee Chuck Pateman, his son Christopher Pateman and his attorney Richard Blancato.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicants sought a variance from the provisions of § 243-79 of the Code, relating to site capacity, so as to permit the construction of a single family residence.

The Board reviewed drawings and other submissions from the Applicants. The Applicants and Mr. Pateman described to the Board their plan to construct the house

while maintaining the natural and environmentally sensitive aspects of the site. Many affected and neighboring property owners attended the meeting and expressed concerns with the possible environmental effects of the proposed house, and opposition to the construction of the house.

The Board decided that it could not rule, as a matter of law, that the subject parcel had a “0” site capacity under all circumstances. The Board decided to apply the standard variance criteria to determine whether a variance was warranted. The Board concluded that one of the criteria, environmental impact and the measures proposed to alleviate it, should be reviewed first by the Planning Board before the Zoning Board could decide whether, on the basis of all of the criteria governing the grant of a variance, including environmental impact, a variance is warranted.

The question the Board referred to the Planning Board was the fourth of the five issues that must be examined when determining a variance, namely, whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Chairman noted that in two prior cases involving the Zoning Ordinance’s resource protection provisions, Mulholtra and Greenwich Funding, the Board decided this question with advice from the Village Engineer, Ralph Mastromonaco. The Chairman further noted that in each of those cases, there was only one resource protected feature (steep slopes and watershed, respectively), and one corrective measure (redirecting water runoff), at issue. In those cases, the Board could address the variance’s environmental impact itself, by calling Mr. Mastromonaco into its hearings. The Board concluded that in the present application, however, the environmental question was more complex, involving the interaction of three protected

features: steep slopes, watershed and wetlands. The question of how effective the applicant's proposed methods will be in protecting these features involves drainage, topographic, engineering and other issues, which the Board felt the Planning Board would be better equipped to determine.

The Board noted that after the application was reviewed by the Planning Board, the Applicant would be required to return to the Zoning Board to seek a variance, but at that time the Zoning Board would have the benefit of the record developed before the Planning Board regarding the environmental impact of the proposed improvements.

For the foregoing reasons, the matter was referred to the Planning Board for further proceedings.

2002-30 Shane and Michelle Coppola – 33 Ardsley Avenue West (Sheet 13, Lot P151)

The Applicants appeared with the attorney David Steinmetz.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

The Applicants sought a variance from the provisions of § 224-13 of the Code, relating to coverage, so as to permit the addition of a pool, pool house and related improvements.

The Board reviewed drawings submitted by the Applicant and letters in support of the proposed improvements submitted by neighboring property owners. The Board noted that the Applicants' lot was large, such that the coverage violation, while not insubstantial, did not physically appear excessive. The Board also noted that the

proposed improvements were situated on a portion of the lot so as to reduce the visibility of the pool and pool house from the street. The Board also noted the Applicant's plan to provide screening for the proposed improvements. Several Board members remarked that, notwithstanding the size of the lot, the location of the improvements and the screening, the improvements would still result in a substantial violation of the permitted coverage in a 1F40 zone, by approximately 1,346 square feet.

The Applicant thereafter withdrew the application without prejudice to renew it a later time with revised plans.

There being no further business, the meeting was, upon motion duly made and seconded, unanimously adjourned.

/s/ Paul M. Giddins
Paul M. Giddins